

1 **LAQUER, URBAN, CLIFFORD & HODGE LLP**

2 Marija Kristich Decker, State Bar No. 207387

3 Email: *Decker@luch.com*

4 Andrew Q. Thompson, State Bar No. 340286

5 Email: *AThompson@luch.com*

6 200 South Los Robles Avenue, Suite 500

7 Pasadena, California 91101

8 Telephone: (626) 449-1882

9 Facsimile: (626) 449-1958

10 Counsel for Plaintiffs, Trustees of the Operating Engineers Pension Trust, et al.

11

12 **UNITED STATES DISTRICT COURT**
13 **CENTRAL DISTRICT OF CALIFORNIA**

14 TRUSTEES OF THE OPERATING
15 ENGINEERS PENSION TRUST,
16 TRUSTEES OF THE OPERATING
17 ENGINEERS HEALTH AND
18 WELFARE FUND, TRUSTEES OF THE
19 OPERATING ENGINEERS
20 VACATION-HOLIDAY SAVINGS
21 TRUST, TRUSTEES OF THE
22 OPERATING ENGINEERS TRAINING
23 TRUST, TRUSTEES OF THE
24 OPERATING ENGINEERS LOCAL 12
25 DEFINED CONTRIBUTION TRUST,
26 ENGINEERS CONTRACT
27 COMPLIANCE COMMITTEE FUND,
28 and SOUTHERN CALIFORNIA
 PARTNERSHIP FOR JOBS FUND,

1 Plaintiffs,

2 vs.

3 KINCAID INDUSTRIES, INC., a
4 California corporation,

5 Defendant.

6 CASE NO.: 5:23-cv-53

7 **COMPLAINT FOR:**

8 **BREACH OF WRITTEN
9 COLLECTIVE BARGAINING
10 AGREEMENT AND VIOLATION OF
11 ERISA § 515 [29 U.S.C. § 1145]**

1 Plaintiffs, Trustees of the Operating Engineers Pension Trust, Trustees of the
 2 Operating Engineers Health and Welfare Fund, Trustees of the Operating Engineers
 3 Vacation-Holiday Savings Trust, Trustees of the Operating Engineers Training Trust,
 4 Trustees of the Operating Engineers Local 12 Defined Contribution Trust, Engineers
 5 Contract Compliance Committee Fund, and Southern California Partnership for Jobs
 6 Fund complain and allege:

7 **JURISDICTION AND VENUE**

8 1. This Court has jurisdiction of this case pursuant to section 502(e)(1) of
 9 the Employee Retirement Income Security Act of 1974, as amended (“ERISA”) [29
 10 U.S.C. § 1132(e)(1)], which grants the United States District Courts exclusive
 11 jurisdiction over civil actions brought by a fiduciary pursuant to section 502(a)(3) of
 12 ERISA [29 U.S.C. § 1132(a)(3)], to redress violations or enforce the terms of ERISA
 13 or an employee benefit plan governed by ERISA. Such jurisdiction exists without
 14 respect to the amount in controversy or the citizenship of the parties, as provided in
 15 section 502(f) of ERISA [29 U.S.C. § 1132(f)].

16 2. This Court also has jurisdiction of this case pursuant to section 301(a) of
 17 the Labor Management Relations Act of 1947, as amended (“LMRA”) [29 U.S.C.
 18 § 185(a)], which grants the United States District Courts original jurisdiction over
 19 suits for violation of contracts between an employer and a labor organization in an
 20 industry affecting commerce, without respect to the amount in controversy and the
 21 citizenship of the parties.

22 3. Venue is proper in this Court pursuant to section 502(e)(2) of ERISA [29
 23 U.S.C. § 1132(e)(2)], and section 301(a) of the LMRA [29 U.S.C. § 185(a)], in that
 24 this is the district in which the Plaintiffs’ Trusts (defined below) are administered, the
 25 signatory union maintains union offices, and where the contractual obligation is to be
 26 paid.

27 4. To the extent this Complaint sets forth any state law claims, this Court
 28 has supplemental jurisdiction over those claims pursuant to 28 U.S.C. § 1337(a).

PARTIES

5. Plaintiffs, Trustees of the Operating Engineers Pension Trust, Trustees of the Operating Engineers Health and Welfare Fund, Trustees of the Operating Engineers Vacation-Holiday Savings Trust, Trustees of the Operating Engineers Training Trust, and Trustees of the Operating Engineers Local 12 Defined Contribution Trust (collectively, the “Trustees”), are the trustees of five express trusts (collectively, the “Trusts”) created pursuant to written declarations of trust (the “Trust Agreements”) between the International Union of Operating Engineers, Local Union No. 12 (“Local 12”), and various multiemployer associations in the construction industry in Southern California and Southern Nevada. The Trusts are now, and were at all times material to this action, labor-management multiemployer trusts created and maintained pursuant to section 302(c)(5) of the LMRA [29 U.S.C. § 186(c)(5)]. The Plaintiffs, as trustees of the Trusts, are “fiduciaries” with respect to the Trusts as defined in section 3(21)(A) of ERISA [29 U.S.C. § 1002(21)(A)]. Plaintiff, Engineers Contract Compliance Committee Fund, is established by Local 12 in accordance with Section 6(b) of the Labor Management Cooperation Act of 1978 in order to improve job security and organizational effectiveness. Plaintiff, Southern California Partnership for Jobs Fund, is an industry-wide advancement fund established by the employers and Local 12. Collectively, all plaintiffs are referred to herein as the “Plaintiffs.”

6. At all times material herein, Local 12 has been a labor organization representing employees in the building and construction industry in Southern California and Southern Nevada, and a labor organization representing employees in an industry affecting commerce within the meaning of § 301(a) of the Labor-Management Relations Act of 1947, as amended [29 U.S.C. § 185(a)].

7. At all times material herein, Defendant Kincaid Industries, Inc. ("Defendant"), has been a corporation duly organized and existing by virtue of the

1 laws of the State of California with its principal place of business located in Thousand
 2 Palms, California.

3 **BARGAINING AGREEMENT AND STATUS OF PARTIES**

4 8. On or about August 23, 2018, Defendant executed a Letter of Assent
 5 whereby Defendant agreed to be bound by the terms and conditions of the City of Los
 6 Angeles Department of Public Works 2015 – 2020 Extension project labor agreement
 7 (“LA DPW Extension PLA”) by and among the City of Los Angeles Department of
 8 Public Works (“DPW”) and signatory Building and Construction Trades Council and
 9 Union and the DPW Public Infrastructure Stabilization Policy, for work performed by
 10 Defendant on a City of Los Angeles construction project known as the Rancho
 11 Cienega Sports Complex Project – Phase I (“Rancho Sports Project”). Plaintiffs are
 12 informed and believe, and thereon allege, that on or after August 23, 2018, Defendant
 13 began performing work on the Rancho Sports Project.

14 9. On or about May 8, 2019, Defendant executed a Letter of Assent
 15 whereby Defendant agreed to be bound by the terms and conditions of the Los
 16 Angeles Unified School District (“LAUSD”) Project Stabilization Agreement – New
 17 School Construction Major Rehabilitation Funded by Proposition BB and/or Measure
 18 K effective October 1, 2003 Agreement (“LAUSD PSA”) by and among the Los
 19 Angeles/Orange Counties Building and Construction Trades Council for work
 20 performed by Defendant on a LAUSD construction project known as the Ulysses S.
 21 Grant HS Comprehensive Modernization Project (“Ulysses HS Project”). Plaintiffs
 22 are informed and believe, and thereon allege, that on or after May 8, 2019, Defendant
 23 began performing work on the Ulysses Project.

24 10. On or about July 8, 2019, Defendant executed a Letter of Assent whereby
 25 Defendant agreed to be bound by the terms and condition of the LAUSD PSA for
 26 work performed by Defendant on a LAUSD construction project known as the
 27 Roosevelt High School Project (“Roosevelt HS Project”). Plaintiffs are informed and
 28

1 believe, and thereon allege, that on or about July 8, 2019, Defendant began
2 performing work on the Roosevelt HS Project.

3 11. On or about December 15, 2020, Defendant executed a Letter of Assent
4 whereby Defendant agreed to be bound by the terms and conditions of the LAUSD
5 PSA for work performed by Defendant on a LAUSD construction project known as
6 the Taft Charter High School Project (“Taft Charter HS Project”). Plaintiffs are
7 informed and believe, and thereon allege, that on or about December 15, 2020,
8 Defendant began performing work on the Taft Charter HS Project.

9 12. On or about March 10, 2021, Defendant executed a Letter of Assent
10 whereby Defendant agreed to be bound by the terms and conditions of the Wide
11 Project Labor Agreement for the Port of Long Beach Port (“Long Beach Wide PLA”)
12 by and among the City of Long Beach Harbor Department and the Los
13 Angeles/Orange Counties Building and Construction Trades Council for work
14 performed by Defendant on a City of Long Beach Harbor Department construction
15 project known as the Port of Long Beach Fire Station #20 (the “Long Beach Fire
16 Station Project”). Plaintiffs are informed and believe, and thereon allege, that on or
17 about March 10, 2021, Defendant began performing work on the Long Beach Fire
18 Station Project.

19 13. Plaintiffs are informed and believe, and based thereon allege, that
20 pursuant to the terms of the LA DPW Extension PLA, LAUSD PSA, and Long Beach
21 Wide PLA (collectively referred to as the “Project Labor Agreements”), all
22 contractors and subcontractors who have been awarded contracts for work covered by
23 the Project Labor Agreements, or otherwise perform work on a project covered by the
24 Project Labor Agreements, are required to accept and be bound to the terms and
25 conditions of the Project Labor Agreements. Trustees are informed and believe, and
26 thereon allege, that Defendant is bound to the Project Labor Agreements by working
27 on the Rancho Sports Project, Ulysses HS Project, Roosevelt HS Project, Taft Charter
28 HS Project, and Long Beach Fire Station Project.

1 14. The Project Labor Agreements incorporate by reference certain collective
2 bargaining agreements of signatory unions. Local 12 is a signatory union to the
3 Project Labor Agreements; therefore, the terms and provisions of Local 12's
4 applicable collective bargaining agreements and related Trust Agreements are
5 incorporated into the Project Labor Agreements.

6 15. Local 12's applicable collective bargaining agreement for the work
7 performed under the Project Labor Agreements is the Master Labor Agreement (the
8 "Master Agreement") in effect between Local 12 and the Southern California
9 Contractors Association, Inc. ("Association"), a multi-employer association, and the
10 incorporated Trust Agreements. The Master Agreement incorporates by reference the
11 Trust Agreements. On or about February 3, 2021, Defendant signed written
12 acknowledgments and acceptances of each of the Trust Agreements.

13 16. The Project Labor Agreements expressly provide that contractors
14 signatory to the Project Labor Agreements adopt and agree to be bound by the written
15 terms of the applicable, legally established, trust agreements specifying the detailed
16 basis on which payments are to be made into, and benefits paid out of, such trust
17 funds for its employees. The Project Labor Agreements further provide that
18 signatory contractors authorize the parties to such trust funds to appoint trustees and
19 successor trustees to administer the trust funds and "hereby ratifies and accepts the
20 trustees so appointed as if made by the Contractor."

21 17. At all times since at least May 8, 2019, the Master Agreement has been
22 an effective written collective bargaining agreement between the Association and
23 Local 12. At all times relevant herein, Defendant was obligated to the terms and
24 provisions of the Agreement, Master Agreement, and related Trust Agreements.

25 18. Plaintiffs are informed and believe, and thereon allege, that Defendant
26 may have executed additional letters of assent whereby Defendant agreed to be bound
27 by the Master Agreement and Trust Agreements for work performed on other works
28

of public improvement and that Defendant performed work on said projects covered by the Master Agreements.

19. The Rancho Sports Project, the Ulysses Project, the Roosevelt HS Project, the Taft Charter Project, and the Long Beach Fire Station Project, are referred to collectively herein as the “Projects.”

20. Defendant is an “*employer*,” as that term is understood in the Master Agreement and related Trust Agreements.

21. Defendant is an “*employer*” as defined and used in section 3(5) of ERISA [29 U.S.C. § 1002(5)], and therefore, Defendant is “*obligated to make contributions to a multiemployer plan*” within the meaning of section 515 of ERISA [29 U.S.C. § 1145]. Plaintiffs are informed and believe, and thereon allege, that Defendant is also an “*employer*” engaged in “*commerce*” in an “*industry affecting commerce*,” as those terms are defined and used in sections 501(1) and 501(3) of the LMRA [29 U.S.C. § 142(1) and § 142(3)], and within the meaning and use of section 301(a) of the LMRA [29 U.S.C. § 185(a)].

FIRST CLAIM FOR RELIEF

Breach of Written Collective Bargaining Agreement and Violation of § 515 of ERISA [29 U.S.C. § 1145]

22. Plaintiffs hereby incorporate by reference paragraphs 1 through 21 above to the same effect as if set forth here verbatim.

23. Section 515 of ERISA [29 U.S.C. § 1145], provides “[e]very employer who is obligated to make contributions to a multiemployer plan under the terms of the plan or under the terms of a collectively bargained agreement shall, to the extent not inconsistent with law, make such contributions in accordance with the terms and conditions of such plan or such agreement.”

24. Defendant is an “*employer*” as defined and used in § 3(5) of ERISA [29 U.S.C. § 1002(5)], and is “*obligated to make contributions to a multiemployer plan*” within the meaning and use of section 515 of ERISA [29 U.S.C. § 1145].

1 25. By the terms and provisions of the Master Agreement and related Trust
2 Agreements, and at all times material herein:

3 A. Defendant agreed to prepare and submit true, complete, and
4 accurate written monthly contribution reports (“Monthly Reports”) to Plaintiffs on a
5 timely basis showing the identities of its employees performing work covered by the
6 Master Agreement, the number of hours worked by or paid to these employees, and
7 based upon the hours worked or amounts paid to employees, the proper calculation of
8 the fringe benefit contributions due for such employees. The Monthly Reports are
9 either submitted in hard copy or electronically through an online reporting portal;

10 B. At all times material herein, Defendant has been obligated to
11 submit its Monthly Reports and pay its contributions to Plaintiffs at Plaintiffs’
12 administrative offices in Pasadena, California, on or before the 10th day of each
13 successive month;

14 C. Defendant agreed to permit Plaintiffs and their agents to conduct
15 audits of payroll and related records to determine if fringe benefit contributions have
16 been properly paid pursuant to the Master Agreement and related Trust Agreements;
17 and

18 D. Defendant agreed to pay to Plaintiffs fringe benefit contributions,
19 benefits and/or withholdings on a monthly basis, and at specified rates for each hour
20 worked by, or paid to, applicable employees. These amounts are due and payable at
21 Plaintiffs’ administrative offices in Pasadena, California.

22 26. Defendant submitted Monthly Reports to Plaintiffs reflecting work
23 performed by Defendant’s employees during the months of July 2022 through
24 September 2022 for work performed on the Projects. By those Monthly Reports,
25 Defendant admitted that it owed Plaintiffs fringe benefit contributions totaling at least
26 \$100,515.35, but Defendant failed to pay to Plaintiffs all of the fringe benefit
27 contributions due in violation of the Master Agreement and Trust Agreements, and its
28 statutorily mandated obligation under section 515 of ERISA [29 U.S.C. § 1145], to

1 timely pay fringe benefit contributions to Plaintiffs pursuant to the Master Agreement
 2 and related Trust Agreements for that work. This amount is due and payable at
 3 Plaintiffs' administrative offices in Pasadena, California.

4 27. Plaintiffs are informed and believe, and thereon allege, that Defendant
 5 has failed to pay certain additional amounts of fringe benefit contributions not
 6 presently known to Plaintiffs. These additional amounts will be established by proof.

7 28. Defendant is a "*delinquent*," as that term is used in the Master Agreement
 8 and related Trust Agreements.

9 29. Plaintiffs are informed and believe, and thereon allege, that there is no
 10 legal excuse for Defendant's breach of its obligations under the Master Agreement
 11 and related Trust Agreements in violation of section 515 of ERISA [29 U.S.C.
 12 § 1145].

13 30. Defendant has failed to pay, or timely pay, contributions owed to
 14 Plaintiffs, accruing since at least July 2022. Pursuant to the Master Agreement,
 15 Defendant agreed that in the event Defendant failed to pay or to timely pay fringe
 16 benefit contributions, or otherwise comply with the terms and provisions of the Master
 17 Agreement and related Trust Agreements, Defendant would be considered delinquent
 18 with Plaintiffs and would pay Plaintiffs the greater of \$25.00 per month or ten percent
 19 (10%) of the total amount then due as liquidated damages for each delinquency.

20 31. Pursuant to section 502(g)(2) of ERISA [29 U.S.C. § 1132(g)(2)], in any
 21 action by a fiduciary in which judgment is found in favor of the plan, the Court shall
 22 award the plan: (i) the unpaid contributions, (ii) interest on the unpaid contributions,
 23 (iii) an amount equal to the greater of (a) interest on the unpaid contributions or (b)
 24 liquidated damages provided for under the plan in an amount not in excess of 20% (or
 25 such higher percentage as may be permitted under federal or state law) of the amount
 26 determined by the Court to be unpaid contributions, (iv) reasonable attorneys' fees
 27 and costs, and (v) such other legal or equitable relief as the Court deems appropriate.
 28 For purposes of section 502(g)(2) of ERISA [29 U.S.C. § 1132(g)(2)], interest on

1 unpaid contributions shall be determined by using the rate provided under the plan or,
2 if none, the rate prescribed under section 6621 of the Internal Revenue Code of 1986,
3 as amended, 26 U.S.C. § 6621.

4 32. Pursuant to the written Operating Engineers Trust Funds Joint
5 Contribution Committee Collection Policy & Procedures (“Joint Collection Policy”)
6 promulgated by the Plaintiffs’ Trustees pursuant to the authority granted to them by
7 the Master Agreement and/or Trust Agreements, interest on unpaid or untimely paid
8 fringe benefit contributions shall be calculated at 8% per annum. The Joint Collection
9 Policy also provides that liquidated damages shall be assessed at 10% of unpaid or
10 untimely paid contributions.

11 33. Pursuant to the Master Agreement, related Trust Agreements, Joint
12 Collection Policy, and section 502(g)(2)(C) of ERISA [29 U.S.C. § 1132(g)(2)(C)],
13 Defendant owes Plaintiffs liquidated damages of at least \$10,051.55. The exact
14 amount of liquidated damages owed by Defendant to Plaintiffs will be established by
15 proof.

16 34. Pursuant to the Master Agreement, related Trust Agreements, Joint
17 Collection Policy, and section 502(g)(2)(B) of ERISA [29 U.S.C. § 1132(g)(2)(B)],
18 Defendant owes Plaintiffs interest calculated at 8% per annum from the respective due
19 dates on all unpaid or untimely paid fringe benefit contributions. The exact amount of
20 interest owed by Defendant to Plaintiffs will be established by proof.

21 35. By the Master Agreement and related Trust Agreements, Defendant
22 agreed to pay Plaintiffs all legal costs and audit costs in connection with the collection
23 of any delinquency, whether incurred before or after litigation is commenced.

24 36. It has been necessary for Plaintiffs to engage legal counsel for the
25 purpose of collecting said contributions and damages, and Plaintiffs are entitled to
26 their reasonable attorneys’ fees in connection therewith pursuant to the Master
27 Agreement, Trust Agreements, Joint Collection Policy, and section 502(g)(2)(D) of
28 ERISA [29 U.S.C. § 1132(g)(2)(D)]. The exact amount of the legal fees due and

payable has not been ascertained at this time. These amounts shall be established by proof.

37. Pursuant to section 502(g)(2)(E) of ERISA [29 U.S.C. § 1132(g)(2)(E)], the Court may grant such other legal or equitable relief as the Court deems appropriate. As part of Plaintiffs' judgment, Plaintiffs shall request the Court to:

A. Order Defendant to post and deliver either a good faith deposit, or a performance bond issued in favor of Plaintiffs in an amount determined by the Court to be appropriate, and

B. Order the creation of a constructive trust on all applicable property and order the transfer of the applicable property to Plaintiffs, and

C. Order Defendant to pay to Plaintiffs all amounts due to Plaintiffs, including, but not limited to, the unpaid contributions, other damages for breach of contract, legal fees, audit costs, and other expenses and damages incurred.

PRAYER

WHEREFORE, Plaintiffs pray for judgment against Defendant, as follows:

1. For unpaid fringe benefit contributions of at least \$100,515.35, plus additional amounts as proved;

2. For damages in amounts as proved;

3. For liquidated damages of at least \$10,051.55, plus additional amounts as proved;

4. For interest in amounts as proved;

5. For reasonable attorneys' fees and costs of suit incurred, in amounts as proved;

6. For such additional relief as this Court deems just and proper, including, but not limited to, the following:

6.1 An Order for the creation of a constructive trust on all applicable property, and an Order for the transfer of the applicable property to Plaintiffs;

111

1 6.2 For a good faith deposit or performance bond in favor of Plaintiffs
2 in an amount equal to the total amount determined by this Court to be due to
3 Plaintiffs, as proved.

4
5 Dated: January 12, 2023

Respectfully Submitted,

6 LAQUER URBAN CLIFFORD & HODGE LLP

7 By: /s/ Andrew Q. Thompson

8 ANDREW Q. THOMPSON

9 Counsel for Plaintiffs, Trustees of the Operating
Engineers Pension Trust, et al.

10
11
12 **WAIVER OF JURY TRIAL**

13 Plaintiffs hereby waive a jury trial in this action.

14
15 Dated: January 12, 2023

Respectfully Submitted,

16 LAQUER URBAN CLIFFORD & HODGE LLP

17 By: /s/ Andrew Q. Thompson

18 ANDREW Q. THOMPSON

19 Counsel for Plaintiffs, Trustees of the Operating
Engineers Pension Trust, et al.